

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

Blue Spike, LLC,

Plaintiff,

v.

TEXAS INSTRUMENTS, INC., et
al.,

Defendants.

CASE NO. 6:12-cv-499 MHS

LEAD CASE

Jury Trial Demanded

**JOINT MOTION TO DISMISS BLUE SPIKE'S THIRD AND
THIRTEENTH AFFIRMATIVE DEFENSES AGAINST AUDIBLE
MAGIC CORP. (DKT. NOS. 1742, 1746, and 1747)**

Plaintiff Blue Spike, LLC and Counter-Defendants Blue Spike, Inc. and Scott Moskowitz (collectively "Blue Spike") and Audible Magic Corp. move the Court to dismiss two of Blue Spike's Affirmative Defenses. On September 5, 2014 Blue Spike filed a Reply in Response to Audible Magic, Corp.'s counterclaims. Blue Spike asserted seventeen affirmative defenses in total. Pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii), the Parties stipulate to the dismissal without prejudice of Blue Spike's Third Affirmative Defense of Invalidity and Blue Spike's Thirteenth Affirmative Defense of Unenforceability for Inequitable Conduct.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this document was served on all counsel who are deemed to have consented to electronic service. Local Rule CV-5(a)(3)(A). Pursuant to Federal Rule of Civil Procedure 5(d) and Local Rule CV-5(d) and (e), all other counsel of record not deemed to have consented to electronic service were served with a true and correct copy of the foregoing by email.

/s/ Randall T. Garteiser
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